



African Inland Church (Maungu) & 3 others v Mboje & another (Environment and Land Appeal 3 of 2024) [2024] KEELC 4731 (KLR) (Environment and Land) (14 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4731 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND APPEAL 3 OF 2024**

EK WABWOTO, J

JUNE 14, 2024

BETWEEN

**AFRICAN INLAND CHURCH (MAUNGU) 1ST APPELLANT
REV NGULI DCC KALAMA (MACHAKOS) 2ND APPELLANT
PASTOR KAMBI MWANZIJE LALO 3RD APPELLANT
SELINA MUSEMBI (CHAIRLADY) 4TH APPELLANT**

AND

**DANIEL MWANDOE MZAME 1ST RESPONDENT
MKANYIKA ANTONY MBOJE 2ND RESPONDENT**

(Being an Appeal from the judgment of the Learned Magistrate Hon. A.M. OBURA (MRS) in PMCELC NO. 75 OF 2023 delivered on the 25th May 2023)

RULING

1. This Ruling is in respect to the Respondent's Preliminary Objection dated 9th June 2023 which seeks to have the appeal dismissed in limine on the grounds that the Appellants Advocate has no capacity to prosecute the Appeal, the Appeal as filed and canvassed violates the mandatory provisions of Order 9 Rule 9 of the [Civil Procedure Rules](#) 2010 and that the Appeal is misconceived, fatally defective and malafide.
2. The Preliminary Objection was contested and pursuant to the directions issued by the court, it was directed that the same be canvassed by way of written submissions. The Appellants filed written submissions dated 20th May 2024 which the court has considered. The Respondents filed written submissions dated 19th March 2024.



3. The Appellants urged the court to dismiss the Preliminary Objection on the grounds that no prejudice has been suffered by the Respondents by having the law firm Okanga & Company Advocates acting for the Appellants and further that Order 9 Rule 9 of the [Civil Procedure Code](#) is not fatal as the said provision was to assist advocates from mischievous clients who would wait after judgment has been delivered to sack their advocates. Reliance was placed in the case of Nairobi ELRC No. 97 of 2019, Martin L. [Barasa =Versus= Giza Systems Smart Solutions Limited.](#)
4. The Respondents argued that the current Advocate on record had not filed and served any duly signed consent and thus is a stranger to this proceedings and further lacks locus standi to prosecute this Appeal. Reliance was placed to the following cases:- [Mombasa Highway Transport Limited =Versus= Gulf Africa Bank Limited](#) (2019) eKLR, [Kazungu Ngari Yaa =Versus= Ministry Naran Mulji & Company](#) (2014) eKLR among others.
5. Having considered the Preliminary Objection and the written submissions for the parties. The main issue for consideration is whether the Preliminary Objection is merited.
6. The essence of the Preliminary Objection as raised by the Respondent touches on the locus standi of an advocate to represent a client after delivery of judgment. The underpinning legal provisions for legal representation is outlined in Order 9 Rule 9 of [Civil Procedure Rules](#) that;

“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court—

 - (a) upon an application with notice to all the parties; or
 - (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”
7. In my considered view and as has been held in various court decisions and rightly posited by the both parties in their written submissions, the intent of Order 9 Rule 9 and 10 of the [Civil Procedure Rules](#) was to cure the mischief of litigants sacking their advocates at the execution stage or at the point of filing their bill of costs thus denying their advocates their hard-earned fees. Had this court been the first court of call, I would not have hesitated but upheld that once judgement has been rendered, leave has to be sought from the same court.
8. However, the scenario is different in the instant case, this court is sitting as an appellate court. Does one need to seek leave in such circumstances? Bearing in mind the provisions of Section 1A of the [Civil Procedure Act](#) and Section 3 of the [Environment and Land Court Act](#) that courts have to ensure that cases are conducted in a manner that are just and expeditious. It is my view that Order 9 Rule 9 and 10 of the [Civil Procedure Rules](#) does not apply in instances of an appeal because the advocate’s instructions in a lower court are exhausted at the conclusion of a matter and requiring such leave would be tantamount to denying such an Appellant a right to legal representation of his choice at an appellate stage thus negating the intent of just and expeditious disposal of a dispute. The court is further persuaded by the following decisions including; [Magereza Savings & Credit Co-operative Society Limited v Samuel Gachini Wahiu & 881 others](#) [2014] eKLR, [Martin Mutisya Kii & Another Vs Benson Mwendu Kasyali](#) Machakos High Court Misc. Application No. 107 of 2013, [Tobias M. Wafubwa v Ben Butali](#) [2017] eKLR and [Kenya Pipeline Company Limited vs Lucy Njoki Njuru](#) [2014] eKLR. The Court of



Appeal when faced with a similar issue in the case of *Tobias M. Wafubwa v Ben Butali* [2017] eKLR held thus;

“Once a judgment is entered, save for matters such as applications for review or execution or stay of execution inter alia, an appeal to an appellate court is not a continuation of proceedings in the lower court, but a commencement of new proceedings in another court, ... Parties should therefore have the right to choose whether to remain with the same counsel or to engage other counsel on appeal without being required to file a Notice of Change of Advocates or to obtain leave from the concerned court to be placed on record in substitution of the previous advocate”.

9. In view of the foregoing I am not persuaded to hold otherwise and I find that the firm of Okanga & Company Advocates are properly on record for the Appellants.
10. In the circumstances, the Respondent’s Notice of Preliminary Objection dated 10th April 2024 is unmerited and the same is dismissed. Costs to abide the determination of the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 14TH DAY OF JUNE 2024.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Okanga Appellants.

Mr. Mwzighe Respondents.

Court Assistant; Patrick Maina.

